

**STATE OF CALIFORNIA
ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION**

In the Matter of:)	Docket No. 02-SIT-1
)	ORDER NO. 02-1023-03
RULEMAKING TO IMPLEMENT)	Order Adopting Amendments
RULES OF PRACTICE AND)	To The Power Plant Siting
PROCEDURE AND SITE)	Regulations
CERTIFICATION.)	
_____)	

I. Initiation of Formal Rulemaking

On August 30, 2002, publication of the Notice of Proposed Action in the California Administrative Notice Register began the formal rulemaking to consider the adoption of amendments to the Energy Commission's Power Plant Site Certification Regulations. These regulations are contained in Title 20 of the California Code of Regulations; specifically sections 1231, 1232, 1237, 1720.3, 1768, and 1769. Publication of the Notice began a 45-day public comment period, which ended on October 14, 2002.

II. Consideration of Alternatives

The Energy Commission has determined that no alternative would be more effective in carrying out the purpose for which this action is proposed or would be as effective as and less burdensome to affected private persons than the regulations proposed for adoption. The text of the proposed amendments is the same language that was provided to the Office of Administrative Law and the public with the Notice of Proposed Action.

III. Adoption of Regulations

On October 23, 2002, the Commission held a public hearing to receive comments on the proposed amendments and to consider their adoption. Most of the comments received during the public comment period raised objections to the proposed amendment to section 1720.3 regarding construction and operation deadlines. The comments in general claimed that the proposed amendment conflicted with recent amendments to Public Resources Code section 25534

regarding construction milestones and grounds for revocation of a license. After considering all comments received and the staff's responses, the Siting Committee recommended withdrawal of the amendment proposed for section 1720.3, but approval of all other proposed amendments. The Commission voted unanimously to approve the Committee's recommendations and, thus, approved the amendments, except for the proposed amendment to section 1720.3.

The Energy Commission hereby adopts the amendments, which are attached, with the exception of section 1720.3, and authorizes the Executive Director to prepare the final documents to complete the rulemaking record for submittal to the Office of Administrative Law. The Commission authorizes the Executive Director to make corrections and non-substantive changes as may be requested by the Office of Administrative Law for its approval.

IV. Authority and Reference

The Energy Commission is authorized to adopt regulations for power plant site certification pursuant to Public Resources Code sections 25213, 25218(e), 25539, and 25541.5. The adopted regulations implement Government Code section 11180 and Public Resources Code sections 21080.5, 25210, 25362, 25500, 25523, 25532, 25534, 25534.1, 25541.5, 25900, and 25967.

Dated: October 23, 2002

CALIFORNIA STATE ENERGY
RESOURCES CONSERVATION AND
DEVELOPMENT COMMISSION

WILLIAM J. KEESE
Chairman

ROBERT PERNELL
Commissioner

JAMES D. BOYD
Commissioner

ARTHUR H. ROSENFELD
Commissioner

JOHN L. GEESMAN
Commissioner

COMPLETE TEXT OF THE ENERGY COMMISSION'S PROPOSED AMENDMENTS TO THE POWER PLANT SITING REGULATIONS

Docket No. 02-SIT-1

August 2002

Adopted October 23, 2002

Title 20, California Code of Regulations
Division 2 – State Energy Resources Conservation and Development Commission
Chapter 5 – Site Certification

§ 1231. Complaints and Requests for Investigation; Filing.

Any person, including but not limited to the commission staff or the owner or operator of a powerplant or transmission line, may file a complaint alleging a violation of a statute, regulation, order, program, or decision adopted, administered, or enforced by the commission. Any complaints alleging noncompliance with a commission decision adopted pursuant to Public Resources Code section 25500 and following must be filed solely in accordance with section 1237. Any person may also file a request for investigation, including a request for a jurisdictional determination regarding a proposed or existing site and related facilities.

(a) A complaint or request for investigation shall be filed with the General Counsel of the commission.

(b) The complaint or request for investigation shall include:

(1) the name, address, and telephone number of the person filing the complaint (complainant) or request for investigation (petitioner);

(2) the name, address, and telephone number of the person allegedly violating the statute, regulation, order, or decision (respondent) or, in the case of a request for a jurisdictional investigation, the name, address, and telephone number of the person owning or operating, or proposing to own or operate, the project which is the subject of the request for investigation (respondent);

(3) a statement of the facts upon which the complaint or request for investigation is based;

(4) a statement indicating the statute, regulation, order, or decision upon which the complaint or request for investigation is based;

(5) the action the complainant or petitioner desires the commission to take;

(6) the authority under which the commission may take the action requested;

(7) a statement by the complainant or petitioner specifically listing the names and addresses of any other individuals, organizations, and businesses which the complainant or petitioner knows or has reason to believe would be affected by the relief sought; and

(8) a declaration under penalty of perjury by the complainant or petitioner attesting to the truth and accuracy of any factual allegations contained in the complaint or request for investigation. If any of the applicants are corporations or business associations, the declaration shall be dated, signed, and attested to by an officer thereof. Where a declaration is filed on behalf of a joint venture or proposed joint venture, all members of the joint venture or proposed joint venture shall date, sign, and attest to the declaration.

NOTE: Authority cited: Sections 25213, 25218(e), and 25539, Public Resources Code. Reference: Section 11180, Government Code; Sections 25210, 25362(a), 25362(b), ~~25451, 25452~~, 25500, 25534, 25900, 25967, and 25983, Public Resources Code.

§ 1232. Hearing and Notice Procedures.

(a) Within 30 days after the receipt by the General Counsel of a complaint or request for investigation, the committee, or if none has been assigned, the chairman, shall:

(1) dismiss the matter upon a determination of insufficiency or lack of merit of the pleadings, specifying whether the dismissal is with or without prejudice; or

(2) serve the complaint or request for investigation upon the respondent and all other persons identified in Section 1231(b)(7) and schedule a hearing upon the complaint or request for investigation. The hearing shall be scheduled to commence within 90 days after the receipt by the General Counsel of the complaint or request for investigation. The hearing may be scheduled before the full commission, the committee, or a hearing officer assigned by the chairman at the request of the committee as provided in Section 1205.

(b) Notice, by certified mail, return receipt requested, of complaint or investigatory proceedings shall be given to all petitioners, respondents and persons identified in Section 1231(b)(7) no fewer than 21 days before the first hearing on the matter. In addition, the committee, or if none has been assigned the chairman, may take additional steps to notify other individuals, organizations, and businesses which the committee or the chairman has reason to believe would be adversely affected by a decision.

(c) The notice shall contain:

- (1) the names and addresses of all named complainants, petitioners, and respondents;
- (2) a statement concerning the nature of the complaint or request for investigation, with an identification of the statute, regulation, order, or decision at issue;
- (3) an explanation of the action the commission may take;
- (4) the date, place, and time of the first hearing in the matter; and
- (5) a statement concerning the availability of the public adviser.

NOTE: Authority cited: Sections 25213, 25218(e), 25539, Public Resources Code. Reference: Section 11180, Government Code; Sections 25210, 25362(a), 25362(b), ~~25451, 25452~~, 25500, 25534, 25900, 25967 and 25983, Public Resources Code.

§1237. Post-Certification Complaints

(a) Any person must file any complaint alleging noncompliance with a commission decision adopted pursuant to Public Resources Code section 25500 and following solely in accordance with this section. All such complaints shall be filed with the Docket Unit and submitted to the designated compliance project manager for investigation and shall include the following information:

(1) the name, address, and telephone number of the person filing the complaint (complainant);

(2) the name, address, and telephone number of the person owning or operating, or proposing to own or operate, the project which is the subject of the complaint;

(3) a statement of facts upon which the complaint is based;

(4) a statement indicating the statute, regulation, order, decision, or condition of certification upon which the complaint is based;

(5) the action the complainant desires the commission to take;

(6) the authority under which the commission may take the action requested, if known; and

(7) a declaration under penalty of perjury by the complainant attesting to the truth and accuracy of the statement of facts upon which the complaint is based.

(b) Upon completion of the investigation of the alleged noncompliance, the commission staff shall file a report with the Docket Unit and with the committee assigned pursuant to section 1204 to hear such complaints, or the chairman if none has been assigned, setting forth the staff's conclusions. The report shall be filed no later than 30 days after the receipt by the designated compliance project manager of the complaint and shall be provided to the complainant, project developer, and other interested persons.

(c) If the commission staff is the complainant, it shall file a report with the Docket Unit and with the appropriate committee, detailing the noncompliance and explaining any steps taken to attempt to remedy the noncompliance. The committee shall act on the report in accordance with subsection (e).

(d) Any person may submit written comments on the complaint or staff report within 14 days after issuance of the staff report.

(e) Within 30 days after issuance of the staff report, the committee shall:

(1) dismiss the complaint upon a determination of insufficiency of the complaint or lack of merit;

(2) issue a written decision presenting its findings, conclusions or order(s) after considering the complaint, staff report, and any submitted comments; or

(3) conduct hearings to further investigate the matter and then issue a written decision.

(f) If either the project owner or the complainant is not satisfied with the committee decision, they may appeal to the full commission within 14 days after issuance of the decision. The commission, within 30 days of receipt of the appeal and at a noticed business meeting or hearing, shall issue an order sustaining the committee's determination, modifying it, overturning it, or remanding the matter to the committee for further hearings.

NOTE: Authority cited: Sections 25213, 25218(e), 25539, Public Resources Code. Reference: 11180, Government Code; Sections 25210, 25362(b), 25500, 25534, 25534.1, 25900 and 25967, Public Resource Code.

§ 1768. Notice of Decision; Filing with Resources Agency.

The executive director shall file a notice of the final decision with the Secretary of the Resources Agency, ~~and the Governor's Office of Planning and Research.~~

NOTE: Authority cited: Section 25541.5, Public Resources Code. Reference: Sections 21080.5 and 25541.5, Public Resources Code.

§ 1769. Post Certification Amendments and Changes.

(a) Project Modifications

(1) After the final decision is effective under section 1720.4, the applicant shall file with the commission a petition for any modifications it proposes to the project design, operation, or performance requirements. The petition must contain the following information:

(A) A complete description of the proposed modifications, including new language for any conditions that will be affected;

(B) A discussion of the necessity for the proposed modifications;

(C) If the modification is based on information that was known by the petitioner during the certification proceeding, an explanation why the issue was not raised at that time;

(D) If the modification is based on new information that changes or undermines the assumptions, rationale, findings, or other bases of the final decision, an explanation of why the change should be permitted;

(E) An analysis of the impacts the modification may have on the environment and proposed measures to mitigate any significant adverse impacts;

(F) A discussion of the impact of the modification on the facility's ability to comply with applicable laws, ordinances, regulations, and standards;

(G) A discussion of how the modification affects the public;

(H) A list of property owners potentially affected by the modification; and

(I) A discussion of the potential effect on nearby property owners, the public and the parties in the application proceedings.

(2) Within 30 days after the applicant files a petition pursuant to subsection (a)(1) of this section, the staff shall review the petition to determine the extent of the proposed modifications. Where staff determines that there is no possibility that the modifications may have a significant effect on the environment, and if the modifications will not result in a change or deletion of a condition adopted by the commission in the final decision or make changes that would cause the project not to comply with any applicable

laws, ordinances, regulations, or standards, no commission approval is required and the staff shall file a statement that it has made such a determination with the commission docket and mail a copy of the statement to each commissioner and every person on the post-certification mailing list. Any person may file an objection to staff's determination within 14 days of service on the grounds that the modification does not meet the criteria in this subsection.

(3) If staff determines that a modification does not meet the criteria in subsection (a)(2), or if a person objects to a staff determination that a modification does meet the criteria in subsection (a)(2), the petition must be processed as a formal amendment to the decision and must be approved by the full commission at a noticed business meeting or hearing. The commission shall issue an order approving, rejecting, or modifying the petition at the scheduled hearing, unless it decides to assign the matter for further hearing before the full commission or an assigned committee or hearing officer. The commission may approve such modifications only if it can make the following findings:

(A) the findings specified in section 1755 (c), and (d), if applicable;

(B) that the project would remain in compliance with all applicable laws, ordinances, regulations, and standards, subject to the provisions of Public Resources Code section 25525;

(C) that the change will be beneficial to the public, applicant, or intervenors; and

(D) that there has been a substantial change in circumstances since the Commission certification justifying the change or that the change is based on information which was not known and could not have been known with the exercise of reasonable diligence ~~that was not available to the parties~~ prior to Commission certification.

(4) The staff shall compile and periodically publish a list of petitions filed under this section and their status.

(b) Change in Ownership or Operational Control

(1) A petition to transfer ownership or operational control of a facility shall contain the following information:

(A) A discussion of any significant changes in the operational relationship between the owner and operator;

(B) A statement identifying the party responsible for compliance with the commission's conditions of certification; and

(C) A statement verified by the new owner or operator in the same manner as provided in Section 1707 that the new owner or operator understands the conditions of certification and agrees to comply with those conditions.

(2) The commission may approve changes in ownership or operational control after fourteen days notice.

NOTE: Authority cited: Sections 25213, 25218(e) and 25541.5, Public Resources Code.
Reference: Sections 25523, 25532 and 25534, Public Resources Code.